

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 26 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Access 220, LLC Request for ) WT Docket No. 02-224  
Waivers to Provide Band )  
Management Services Utilizing )  
Licenses in the 220-222 MHz Band )  
 )

Comments of the Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its comments in response to the Wireless Telecommunications Bureau's (Bureau) *Public Notice* (Notice) in the above referenced matter.<sup>1</sup> The Notice seeks comment on Access 220, LLP's (Access) Request for Waivers (Request) of the Commission's rules in order to provide band management services in the 220-222 MHz band. Specifically, Access seeks waivers of Sections 27.2(b); 27.14(a); 27.601(d); 27.604; 27.605; 90.725; 90.733; and 90.769 of the Commission's rules.<sup>2</sup> ITA, as discussed below, believes Access' Request should be granted.

1 See Wireless Telecommunications Bureau Seeks Comment on Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, *Public Notice*, DA 02-1939 (rel. Aug. 6, 2002) (Public Notice).

2 See Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, *Request for Waiver of Access 220, LLC*, (rel. July 3, 2002) p5-6 (Request) See also, 47 C.F.R. § 27.2(b) concerning the permissible operations in the 700 MHz guard band; § 27.14(a) concerning the "substantial service" construction requirement; § 27.601(d) concerning notification to public safety coordinators if licenses or stations are added or modified; § 27.604 concerning limitations on licenses won at auction; § 27.605 concerning geographic partitioning and spectrum disaggregation; § 90.725 concerning the construction requirements for Phase I licenses; § 90.733 concerning the permissible operations in the 220-222 MHz band; and § 90.769 concerning the construction and implementation requirements of Phase II nationwide licenses.

No. of Copies rec'd \_\_\_\_\_  
List ABCDE \_\_\_\_\_

## **I. Statement of Interest**

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

- Alliance of Motion Picture and Television Producers
- Aeronautical Radio, Inc.
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Mining Congress
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc. Furthermore, ITA assisted in the creation of, and continues to provide support for Access' parent company Access Spectrum LLC, as they prepare to lease the spectrum within the 21 geographic licenses they purchased in FCC Auctions 33 and 38 to many private mobile radio users.

## II. Background

On August 28, 1995, the Commission released its *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* (Second MO&O) outlining the licensing and application procedures, and proposing a new operational framework for the 220-222 MHz band.<sup>3</sup> This framework, however, was developed prior to the creation of band manager rules. As such, there are no instances in which the Commission specifically prohibited the use of band managers in the 220-220 MHz band. On July 3, 2002, Access submitted a band manager proposal and its Request seeking waivers of the Commission's rules to provide band manager services in the 220-222 MHz band.<sup>4</sup> On August 6, 2002, the Bureau released a *Public Notice* seeking comment on Access' Request.<sup>5</sup>

## III. Discussion

ITA believes that the grant of Access' waivers to operate in the 220-222 MHz band would be consistent with Commission precedent. The Commission, when proposing the service rules for the 746-764 MHz and 776-794 MHz bands, mentioned numerous benefits to using a band manager scheme at 700 MHz. Specifically, the Commission stated, "auctioning spectrum to guard band managers should enable parties to take advantage of the efficiencies of site-by-site licensing, more readily acquire spectrum for varied uses, and streamline the Commission's spectrum management responsibilities."<sup>6</sup> The Commission also noted the importance it placed on flexibility in its 1995 Order in the 220-222 MHz band proceeding stating, "our primary goal

---

<sup>3</sup> See Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, PR Docket 89-552, (rel. Aug. 28, 1995) (Second MO&O).

<sup>4</sup> Request. Access is anticipating the acquisition of a nationwide footprint in the 220-222 MHz band, subject to FCC approval.

<sup>5</sup> Notice.

<sup>6</sup> See In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, WT Docket No. 99-168 (rel. March 9, 2002) ¶ 31 (Second Report & Order).

in this proceeding is to establish a flexible regulatory framework that will allow for more efficient licensing of the 220-222 MHz band, eliminating unnecessary regulatory burdens on both existing and future licensees.”<sup>7</sup> The Commission further recognized that a band manager is capable of achieving the goal of flexibility as shown in the recent proceeding transferring 27 MHz of spectrum from government to non-government uses. In this proceeding the Commission states, “the most appropriate mechanism to provide such flexibility in these bands is by allowing licensees to avail themselves of both traditional licensing and band manager options. This licensing approach is consistent with our goals of promoting spectrum efficiency and diversity of uses.”<sup>8</sup> Allowing a band manager licensing scheme in the 220-222 MHz band, would achieve the same benefits of the 700 MHz band, help achieve the goal of flexibility much like the government transfer bands, promote the public interest and maximize the usage and value of the spectrum.

Although the benefits of using band managers in the 220-222 MHz band are similar to that of the 700 MHz guard band, a different RF environment exists, however, and thus its regulatory framework should be broached differently. Many of the rules that Access seeks a limited waiver of in Part 27 of the Commission’s rules were applicable in the 700 MHz guard band, but would not be applicable in the 220-222 MHz band.<sup>9</sup> The 220-222 MHz band, unlike the 700 MHz band, is not a guard band protecting public safety licensees from commercial operations. The Commission, in the LMCS proceeding, recognized that different bands should be regulated differently to advance spectrum efficiency by stating, “we believe that our limited

---

<sup>7</sup> Second MO&O ¶ 2.

<sup>8</sup> See In the Matter of Amendment to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, (rel. May 24, 2002) ¶ 40 (Report & Order).

<sup>9</sup> 47 C.F.R. § 27.2(b); 27.601(d); 27.604; 27.605; 27.14(a).

departure from some of the Part 27 band manager rules in this instance is consistent with our goal of providing the licensees with the optimal flexibility and will accommodate a variety of business plans. This departure also recognizes differences in the technical and coordination considerations between the 700 MHz band and the bands at issue here.”<sup>10</sup> Granting the limited waivers of Sections 27.2(b), 27.14(a), 27.604, 27.604(d), and 27.605 for the 220-222 MHz band would be consistent with the intent of the service rules that the Commission adopted for the paired 1392-1395 MHz and 1432-1435 MHz bands and the unpaired 1390-1392 MHz, 1670-1675 MHz and 2385-2390 MHz bands.<sup>11</sup>

ITA believes the Commission can facilitate the efficient use of the spectrum in the 220-222 MHz band through the band manager licensing framework. As the Commission itself noted, “we seek to ensure that licenses are granted to those who value spectrum most highly and will maximize its use to provide the best quality and variety of services to consumers.”<sup>12</sup> To meet this end, the Commission must first include band managers in the list of permissible operations in Section 90.733 of the Commission’s rules.<sup>13</sup> On the basis of its business model alone, band managers have an incentive to be spectrally efficient, to achieve the maximum usage of its acquired spectrum, and to lease to a variety of users.

---

<sup>10</sup> Report and Order ¶ 41.

<sup>11</sup> Report and Order ¶ 41, stating, “we are therefore applying the 700 MHz Guard Band Manager rules with these exceptions. Specifically, we will not apply the following rules to the band managers in these frequency bands: (i) Section 27.2 (b)’s prohibition against employing a cellular system architecture; (ii) Section 27.601(d)’s requirement to notify public safety frequency coordinators; (iii) Section 27.603(c)’s requirement that band managers must lease a predominate amount of spectrum to non-affiliates; (iv) Section 27.604’s limitations on licenses won at auction; and (v) Section 27.605’s restrictions on partitioning and disaggregation.”

<sup>12</sup> Second MO&O ¶ 2.

<sup>13</sup> 47 C.F.R. § 90.733.

The waivers of construction requirements found in Section 90.725, and Section 90.769 should also be granted to facilitate the use of a band manager in the 220-222 MHz band.<sup>14</sup> The band manager licensing framework is intrinsically an efficient utilization of the spectrum, without the need for strict construction requirements. Market forces alone provide the band manager with an incentive to lease the spectrum quickly to maximize revenues for its investors. It is in the best interest of the band manager to have the leasees construct and operating as soon as possible. Since band managers, themselves, will never construct a license, the construction timetable and requirements are not applicable. ITA believes that Access is not trying to avoid regulation and construction benchmarks, but instead, seeking regulations that are applicable to the circumstance and leading to the best utilization of the spectrum. ITA believes the “substantial service” test including construction of band manager’s leasees, explained in Access’ Request, would be the most equitable solution while providing much needed flexibility.<sup>15</sup>

## **V. Conclusion**

ITA, for the reasons stated above, believes Access should be granted its Request so they can provide band manager services in the 220-222 MHz band. The band manager framework has shown to be an efficient way to license spectrum while maximizing its usage and value of the spectrum through a variety of users.

---

<sup>14</sup> 47 C.F.R § 90.725 and 90.769.

<sup>15</sup> Request p 17-18.

Commission precedent supports the band management licensing framework to promote such flexibility and efficiency in a given band. It would be in the public interest for the Commission to permit a band manger framework in the underused and underutilized 220-222 MHz band.

Respectfully submitted,

INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.  
1110 N. Glebe Road, Suite 500  
Arlington, Virginia 22201  
(703) 528-5115

By: /s/ Laura L. Smith

Laura L. Smith, Esq.  
President and CEO

/s/ Jeremy Denton

Jeremy Denton  
Director, Government Affairs

/s/ Robin Landis

Robin Landis  
Regulatory Affairs Assistant

August 26, 2002

## CERTIFICATE OF SERVICE

I, Robin Landis, do hereby certify that on the 26<sup>nd</sup> day of August 2002, I forwarded to the parties listed below a copy of the foregoing Informal Request for Certification of the Industrial Telecommunications Association, Inc. via electronic mail:

Peter A. Tenhula, Esq.  
Senior Legal Advisor  
Office of Chairman Michael K. Powell  
445 12th Street, SW, 8-B201  
Washington, DC 20554

Sam Feder, Esq.  
Legal Advisor  
Office of Commissioner Kevin J. Martin  
445 12<sup>th</sup> Street, SW, 8-C302  
Washington, DC 20554

Bryan Tramont, Esq.  
Senior Legal Advisor  
Office of Commissioner Kathleen Q. Abernathy  
445 12th Street, SW, 8-A204  
Washington, DC 20554

Paul Margie, Esq.  
Legal Advisor  
Office of Commissioner Michael J. Copps  
445 12<sup>th</sup> Street, SW, 8-A302  
Washington, DC 20554

Thomas J. Sugrue, Esq.  
Chief, Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 3-C252  
Washington, DC 20554

Kathleen Ham, Esq.  
Deputy Chief  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 3-C255  
Washington, DC 20554

D'wana R. Terry, Esq.  
Chief, Public Safety & Private Wireless  
Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 4-C321  
Washington, DC 20554

Mr. Herbert W. Zeiler  
Deputy Chief, Public Safety & Private  
Wireless Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 4-C343  
Washington, DC 20554

Ramona E. Melson, Esq.  
Deputy Chief, Public Safety & Private Wireless  
Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 4-C237  
Washington, DC 20554

Marlene H. Dortch, Esq.\*  
Secretary  
445 12<sup>th</sup> Street, SW, Room TW-325  
Washington, DC 20554

Qualex International\*  
Portals II  
445 12<sup>th</sup> St. SW, Room CY-B402  
Washington, DC 20554

Kathy Harris\*  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> St. SW, Room 4-C236  
Washington, DC 20554

\*via hand delivery

/s/ Robin Landis  
Robin Landis